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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR-18-00578-EJD
Plaintiff,)	SENTENCING MEMORANDUM
v.)	
VAN-SEYLA MORK,)	
Defendant.)	

I. INTRODUCTION

In November 2018, the United States Attorney filed a ten-count Information charging the defendant with one count of conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349; wire fraud, in violation of Title 18, United States Code, Section 1343; and money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2. In May 2019, the defendant pled guilty pursuant to a written plea agreement to count two (wire fraud) and count seven (money laundering). The plea agreement was tendered to the Court pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure.

The United States hereby submits its sentencing memorandum. In advance of the sentencing hearing, the Probation Office prepared a Presentence Report. The Probation Office recommended that

1 this Court impose a custodial sentence of twelve months. For the reasons stated herein, the United
2 States believes that this Court should impose a term of imprisonment of 27 months, 3 years of
3 Supervised Release, and restitution in the amount of \$1,000,000.

4 II. SENTENCING GUIDELINES CALCULATION

5 A. Factual Background

6 For about three years, starting in 2015, the defendant executed what is known as the “Apple
7 Empty Box Scheme.” While the defendant did not invent this scheme, he recruited “clients” and
8 executed the scheme with great success. The defendant defrauded Apple, Inc. by initiating fraudulent
9 complaints to Apple’s customer service department. In each complaint, the defendant alleged, on behalf
10 of Apple’s customers (the defendant’s “clients”), that a purchased Apple product had not been mailed to
11 the customer as it should have been. Instead, the defendant falsely claimed that Apple had mailed an
12 empty box to the customer’s mailing address. The defendant knew at the time he submitted these
13 complaints, that his assertions about the empty boxes were false, and that Apple had, in fact, mailed the
14 purchased products to the customers. Through this fraudulent scheme, the defendant caused Apple to
15 issue \$1,000,000 in refunds for undelivered Apple products that had in fact been delivered.
16 Additionally, the defendant executed the Empty Box Scheme for the purpose of financial gain. Finally,
17 the defendant sent portions of his financial gain from this fraud to his co-defendant with the intent to
18 conceal the nature of his fraud proceeds.

19 B. Offense Level Calculation

20 In the written plea agreement, the parties determined that the appropriate Total Offense Level
21 was 18. [Dkt. 17 at 6.] In the Presentence Report, the United States Probation Office determined that
22 the appropriate Total Offense Level was 20. [PSR ¶ 4.] While the government believes that Probation
23 has correctly calculated the Guidelines, the governments stands-by the calculation in the plea agreement,
24 and recommends that the Court impose a sentence consistent with the calculation contained within the
25 plea agreement.

26 Pursuant to the United States Sentencing Guidelines (“U.S.S.G”), which are advisory after the
27 Supreme Court’s decision in *United States v. Booker*, 125 S.Ct. 738 (2005), the calculation of the
28 defendant’s offense level begins with Count Two (wire fraud). The defendant’s base offense level is 7,

and is increased by 14 levels due to the amount of money involved in the fraud. [U.S.S.G. § 2B1.1(a)(1) and (b)(1)(H), and PSR ¶¶ 32 and 33.] Since the defendant pled guilty and accepted responsibly for his conduct, and pursuant to U.S.S.G. § 3E1.1, the defendant is eligible for a downward adjustment of three levels. [PSR ¶¶ 40 and 41.] Therefore, the defendant's total offense level for wire fraud is 18. [Dkt. 17 at 5.] Next, pursuant to the plea agreement, we calculate the defendant's base offense level for Count Seven (money laundering). According to the plea agreement, the defendant's base offense level for money laundering is 16. [Dkt. 17 at 5.] The defendant's offense level is increased by two levels, because he was convicted of an offense under 18 U.S.C. § 1956. [Dkt. 17 at 5.] Again, the defendant accepted responsibility for his criminal conduct, entitling him to a three-level reduction. [Dkt. 17 at 5.] Therefore, according to the plea agreement, the defendant's adjusted offense level for money laundering is 15. [Dkt. 17 at 5.] Finally, according to the plea agreement, the total offense level, applying the U.S.S.G. grouping rules under Section 3D1.2(d), is 18.

The PSR determined that the Guidelines calculation for Count Seven (money laundering) is found at U.S.S.G. § 2S1.1 and established an Adjusted Offense Level of 23. [PSR ¶ 31.] Since Count Seven yielded the highest offense level for the counts in the group, the offense level for the group, according to the PSR, is the offense level for Count Seven. [PSR ¶ 31.] Therefore, the defendant's adjusted offense level is 23, minus three for acceptance of responsibility, yielding a total offense level of 20. [PSR ¶¶ 32 - 42.]

C. Criminal History Calculation

The government and the Probation Officer calculate that the defendant has zero criminal history points. Therefore, he is placed into Criminal History Category I. [PSR ¶ 46.] Total offense level 18 indexed with a Criminal History Category of I yields a guideline range of 27 - 33 months imprisonment. Once again, the government supports the plea agreement and the Guidelines calculation contained therein.

III. SENTENCING RECOMMENDATION

The United States recommends a sentence of 27 months' imprisonment, followed by a three-year term of Supervised Release. The United States also recommends that the Court order the defendant to pay restitution in an amount of \$1,000,000.

1 A. 3553(a) Factors

2 The statute that governs imposition of sentence, 18 U.S.C. § 3553(a), sets forth factors this Court
3 must consider in crafting a sentence that is “sufficient, but not greater than necessary” to comply with
4 the objectives of sentencing. A sentencing court must consider, among other factors: (1) the nature and
5 circumstances of the offense and the history and characteristics of the defendant; (2) the need for the
6 sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide
7 just punishment for the offense. 18 U.S.C. § 3553(a)(1) and (2)(A).

8 Here, a 27-month sentence would punish the defendant justly and adequately for his serious
9 criminal conduct. The first 3553(a) factor (the nature of the offense and characteristics of the defendant)
10 is particularly relevant when fashioning a just sentence in this case. By its nature, this offense involved
11 deceit and a significant violation of trust. Through his conduct, the defendant took advantage of Apple,
12 Inc.’s customer service policies. Instead of allowing Apple to devote its resources to helping customers
13 with genuine concerns, the defendant used customers to defraud Apple, and personally profited through
14 this deceit.

15 Moreover, this defendant’s characteristics, including his youth and ability to obtain legitimate
16 employment, make this criminal conduct even more disappointing. This defendant had, and continues to
17 have, the ability to obtain legitimate employment. His decision to execute this fraud is difficult to
18 understand. Unfortunately, the defendant’s fraud appears motivated by greed and a desire to earn easy
19 money. According to this defendant’s thinking, legitimate employment was too difficult and not
20 financially rewarding enough.

21 On the other hand, the defendant admitted his wrongdoing quickly. This important mitigation
22 suggests that a reasonable sentence is found within but at the low-end of the applicable Guidelines
23 range.

1 B. Restitution

2 The United States recommends that the Court order the defendant to pay restitution to Apple,
3 Inc. in the amount of \$1,000,000.

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5 DATED: 12/9/2019

Respectfully submitted,

6 DAVID L. ANDERSON
7 United States Attorney

8
9 /s/
10 JEFF SCHENK
11 Assistant United States Attorney
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